

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION**

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CAPITAL ONE SERVICES, LLC and  
CAPITAL ONE, N.A.

Plaintiffs,

v.

NANCY FOSTER

Defendant.

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Civil Action No. 3:09CV569

**MOTION FOR LEAVE TO WITHDRAW AS COUNSEL**

Pursuant to Local Civil Rule 83.1(G), undersigned counsel hereby moves to withdraw from representing Defendant Nancy Foster (“Foster”), pursuant to Virginia Rule of Professional Conduct 1.16(b). In support of this motion, counsel states as follows:

1. Capital One Services, LLC (f/k/a Capital One Services, Inc.) and Capital One, N.A. (collectively “Capital One”) initiated this action against Foster on September 11, 2009.
2. Foster retained the law firm of Steptoe & Johnson LLP (“Steptoe”) in September 2009 to represent her in the above-captioned matter. The terms of Steptoe’s representation of Foster were set forth in a written retainer agreement. That agreement provided in pertinent part that Steptoe could suspend or terminate its representation in the event that Foster failed to pay for work performed or became unable to pay for work to be performed.
3. Steptoe & Johnson attorney J. William Koegel, Jr. subsequently entered an appearance as counsel for Foster.

4. In connection with this representation, Steptoe's bills have not been paid in full. Further in December 2009, Steptoe was notified that Foster would be unable to pay Steptoe's bills. Steptoe's bills for its services will increase as this case continues through discovery – including numerous depositions – and progresses towards trial.

5. Local Civil Rule 83.1(I) states that “the ethical standards relating to the practice of law in civil cases in this Court shall be the Virginia Rules of Professional Conduct . . . .”

6. Virginia Rule of Professional Conduct 1.16(b) allows counsel to withdraw if it can be accomplished without materially prejudicing the client, or if

(4) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled; [or]

(5) the representation will result in an unreasonable financial burden on the lawyer...

*See also, e.g., Hawkins v. Borsby*, 2007 U.S. Dist. LEXIS 14358 \*17-18 (E.D.Va. 2007) (“The Court granted counsel's request to withdraw from representing the defendants because they had failed to pay for services rendered on their behalf.”)

7. Foster has not fulfilled her financial obligations to Steptoe and has represented that she cannot do so. Steptoe has given Foster reasonable notice that her inability to pay for its services will result in an unreasonable financial burden on the firm and, accordingly, that Steptoe intended to move to withdraw. Foster has consented to Steptoe's withdrawal.

8. Steptoe agreed to refrain from filing a motion to withdraw in December or early January so as to assist Foster in attempting to settle this matter, believing at the time that that could accomplished within a few weeks. The parties, however, have not settled this action as of the date of this filing.

9. Capital One does not oppose this motion.

10. For all the foregoing reasons, Steptoe respectfully seeks an order from this Court granting leave to withdraw from further representation of Foster in this matter.

Dated: January 22, 2010

Respectfully submitted,

By: /s/ J. William Koegel, Jr.  
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*Counsel for Defendant Nancy Foster*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of January 2010, a true copy of the foregoing Motion for Leave to Withdraw as Counsel was served by electronic mail and by U.S. mail, postage prepaid to the following:

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